

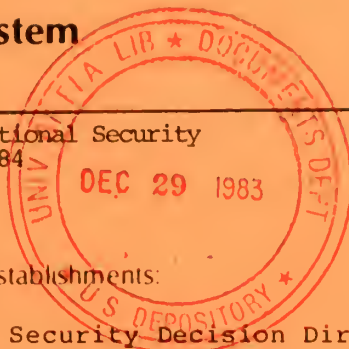
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Federal Personnel Manual System

FPM Letter 736-6

<p>Published in advance of incorporation in FPM</p> <p>chapter 736</p> <p>RETAIN UNTIL SUPERSEDED</p>
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SUBJECT: Use of Polygraphs Under National Security
Decision Directive Number 84



Washington, D. C. 20415
December 15, 1983

Heads of Departments and Independent Establishments:

1. The President issued National Security Decision Directive Number 84 (NSDD-84) on March 11, 1983. In pertinent part, the Office of Personnel Management and departments and agencies with employees having access to classified information are directed to revise existing regulations and policies so that employees may be required to submit to polygraph examinations, when appropriate, in the course of investigations into unauthorized disclosures of classified information.
2. By Federal Personnel Manual letter 736-4 of October 25, 1968, the United States Civil Service Commission issued instructions on the use of the polygraph in personnel investigations of competitive service applicants and appointees to competitive service positions. These instructions were incorporated into the Federal Personnel Manual at Chapter 736, Appendix D. Under the instructions, Executive agencies with a highly sensitive intelligence or counterintelligence mission directly affecting the national security may use the polygraph for employment screening and personnel investigations of applicants for, and appointees to, competitive service positions, but only after complying with certain standards set out in the instructions.
3. The Federal Personnel Manual instructions apply only to use of the polygraph "for employment screening and personnel investigations of applicants for and appointees to competitive service positions." The reach of the instructions is therefore confined to those incidents of personnel processing related to meeting conditions of employment for admission into the competitive civil service.
4. Because the directives set out by the President in NSDD-84 apply to employees rather than applicants or appointees, and because they apply to the use of the polygraph in the course of investigating unauthorized disclosure of classified information rather than for employment screening and personnel purposes, there is no conflict between those directives and the Federal Personnel Manual instructions. Even if any or all of the referenced FPM instructions conflicted with the directives set out by the President in NSDD-84, they are superseded by the directives and, to the extent thus superseded, are without legal effect.

Donald J. Devine
Director

Attachment

Inquiries: Office of the General Counsel (202) 632-4632

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SYSTEM II
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THE WHITE HOUSE

DATE - TIME

March 11, 1983

MEMORANDUM FOR THE VICE PRESIDENT
 THE SECRETARY OF STATE
 THE SECRETARY OF THE TREASURY
 THE SECRETARY OF DEFENSE
 THE ATTORNEY GENERAL
 THE SECRETARY OF INTERIOR
 THE SECRETARY OF AGRICULTURE
 THE SECRETARY OF COMMERCE
 THE SECRETARY OF LABOR
 THE SECRETARY OF HEALTH AND HUMAN SERVICES
 THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
 THE SECRETARY OF TRANSPORTATION
 THE SECRETARY OF ENERGY
 COUNSELLOR TO THE PRESIDENT
 THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
 THE DIRECTOR OF CENTRAL INTELLIGENCE
 UNITED STATES REPRESENTATIVE TO THE UNITED NATIONS
 UNITED STATES TRADE REPRESENTATIVE
 CHIEF OF STAFF TO THE PRESIDENT
 DEPUTY CHIEF OF STAFF TO THE PRESIDENT
 ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT
 DIRECTOR, WHITE HOUSE MILITARY OFFICE
 CHAIRMAN, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY
 BOARD
 CHAIRMAN, PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD
 CHAIRMAN, COUNCIL OF ECONOMIC ADVISERS
 CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY
 CHAIRMAN, JOINT CHIEFS OF STAFF
 CHAIRMAN, NUCLEAR REGULATORY COMMISSION
 ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT
 DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY
 DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY
 ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION
 DIRECTOR, UNITED STATES INFORMATION AGENCY
 ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE
 ADMINISTRATION
 ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY
 DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
 DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY

DIRECTOR, NATIONAL SCIENCE FOUNDATION
DIPECTOR, NATIONAL SECURITY AGENCY
DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT
DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE

SUBJECT: NSDD-84: Safeguarding National Security Information

The President has approved the attached National Security Decision Directive on safeguarding national security information. The Director of the Information Security Oversight Office shall distribute copies of the Directive to any agency not listed above that originates or handles national security information.

FOR THE PRESIDENT:



William P. Clark

Attachment

NSDD-84

THE WHITE HOUSE

14-00000

March 11, 1983

National Security Decision
Directive Number 84

Safeguarding National Security Information

As stated in Executive Order 12356, only that information whose disclosure would harm the national security interests of the United States may be classified. Every effort should be made to declassify information that no longer requires protection in the interest of national security.

At the same time, however, safeguarding against unlawful disclosures of properly classified information is a matter of grave concern and high priority for this Administration. In addition to the requirements set forth in Executive Order 12356, and based on the recommendations contained in the interdepartmental report forwarded by the Attorney General, I direct the following:

1. Each agency of the Executive Branch that originates or handles classified information shall adopt internal procedures to safeguard against unlawful disclosures of classified information. Such procedures shall at a minimum provide as follows:

a. All persons with authorized access to classified information shall be required to sign a nondisclosure agreement as a condition of access. This requirement may be implemented prospectively by agencies for which the administrative burden of compliance would otherwise be excessive.

b. All persons with authorized access to Sensitive Compartmented Information (SCI) shall be required to sign a nondisclosure agreement as a condition of access to SCI and other classified information. All such agreements must include a provision for prepublication review to assure deletion of SCI and other classified information.

c. All agreements required in paragraphs 1.a. and 1.b. must be in a form determined by the Department of Justice to be enforceable in a civil action brought by the United States. The Director, Information Security Oversight Office (ISOO), shall develop standardized forms that satisfy these requirements.

d. Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel, so as to reduce the opportunity for negligent or deliberate disclosures of classified information. All persons with authorized access to classified information shall be clearly apprised of the agency's policies in this regard.

2. Each agency of the Executive branch that originates or handles classified information shall adopt internal procedures to govern the reporting and investigation of unauthorized disclosures of such information. Such procedures shall at a minimum provide that:

a. All such disclosures that the agency considers to be seriously damaging to its mission and responsibilities shall be evaluated to ascertain the nature of the information disclosed and the extent to which it had been disseminated.

b. The agency shall conduct a preliminary internal investigation prior to or concurrently with seeking investigative assistance from other agencies.

c. The agency shall maintain records of disclosures so evaluated and investigated.

d. Agencies in the possession of classified information originating with another agency shall cooperate with the originating agency by conducting internal investigations of the unauthorized disclosure of such information.

e. Persons determined by the agency to have knowingly made such disclosures or to have refused cooperation with investigations of such unauthorized disclosures will be denied further access to classified information and subjected to other administrative sanctions as appropriate.

3. Unauthorized disclosures of classified information shall be reported to the Department of Justice and the Information Security Oversight Office, as required by statute and Executive orders. The Department of Justice shall continue to review reported unauthorized disclosures of classified information to determine whether FBI investigation is warranted. Interested departments and agencies shall be consulted in developing criteria for evaluating such matters and in determining which cases should receive investigative priority. The FBI is authorized to investigate such matters as constitute potential violations of federal criminal law, even though administrative sanctions may be sought instead of criminal prosecution.

4. Nothing in this directive is intended to modify or preclude interagency agreements between FBI and other criminal investigative agencies regarding their responsibility for conducting investigations within their own agencies or departments.

5. The Office of Personnel Management and all departments and agencies with employees having access to classified information are directed to revise existing regulations and policies, as necessary, so that employees may be required to submit to polygraph examinations, when appropriate, in the course of investigations of unauthorized disclosures of classified information. As a minimum, such regulations shall permit an agency to decide that appropriate

adverse consequences will follow an employee's refusal to cooperate with a polygraph examination that is limited in scope to the circumstances of the unauthorized disclosure under investigation. Agency regulations may provide that only the head of the agency, or his delegate, is empowered to order an employee to submit to a polygraph examination. Results of polygraph examinations should not be relied upon to the exclusion of other information obtained during investigations.

6. The Attorney General, in consultation with the Director, Office of Personnel Management, is requested to establish an interdepartmental group to study the federal personnel security program and recommend appropriate revisions in existing Executive orders, regulations, and guidelines.

A handwritten signature in black ink, appearing to read "David Reagan". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Appendix D. Use of the Polygraph in Personnel Investigations of Competitive Service Applicants and Appointees to Competitive Service Positions

D-1. AGENCIES WHICH MAY USE THE POLYGRAPH

a. An executive agency which has a highly sensitive intelligence or counterintelligence mission directly affecting the national security (e.g., a mission approaching the sensitivity of that of the Central Intelligence Agency) may use the polygraph for employment screening and personnel investigations of applicants for and appointees to competitive service positions only after complying with the requirements in D-2 and D-3 below.

b. All other uses of a polygraph to screen applicants for and appointees to competitive positions are forbidden regardless of whether the polygraph examination is administered by the agency concerned or was obtained by that agency from another source such as an examination given previously by another Federal agency or by a non-Federal agency.

D-2. DETERMINING WHETHER AGENCY MISSION MEETS CRITERIA

The executive agency must submit to the Chairman of the Civil Service Commission (a) a statement of the nature of its mission and (b) a copy of its current regulations and directives governing use of the polygraph as provided in D-3 below (or a citation to them if there has been no change since they were previously submitted and approved). The Chairman shall then determine whether the agency has an intelligence or counterintelligence mission directly affecting the national security and whether the regulations and directives meet current approval requirements.

D-3. REVIEW OF AGENCY REGULATIONS AND DIRECTIVES

a. The agency shall prepare regulations and directives governing use of the polygraph in employment screening and personnel investigations which must be reviewed and approved by the Chairman of the Civil Service Commission. These shall contain at a minimum:

(1) Specific purposes for which the polygraph may be used, and details concerning the types of positions or organizational entities in which it will be used, and the officials authorized to approve these examinations.

(2) A directive that a person to be examined must be informed as far in advance as possible of the intent to use the polygraph and of—

(a) Other devices or aids to the interrogation which may be used simultaneously with the polygraph, such as voice recordings.

(b) His privilege against self-incrimination and his right to consult with legal counsel or to secure other professional assistance prior to the examination.

(c) The effect of the polygraph examination, or his refusal to take this examination, on his eligibility for employment. He shall be informed that refusal to consent to a polygraph examination will not be made a part of his personnel file.

(d) The characteristics and nature of the polygraph machine and examination, including an explanation of the physical operation of the machine, the procedures to be followed during the examination, and the disposition of information developed.

(e) The general areas of all questions to be asked during an examination.

(3) A directive that no polygraph examination will be given unless the person to be examined has voluntarily consented in writing to be examined after having been informed of the above, (a) through (e).

(4) A directive that questions to be asked during a polygraph examination must have specific relevance to the subject of the particular inquiry.

(5) Adequate standards for the selection and training of examiners, keeping in mind the Government's objective of insuring protection for the subject of an examination and the accuracy of polygraph results.

(6) A provision for adequate monitoring of polygraph operations by a high-level official

to prevent abuses or unwarranted invasions of privacy.

(7) A provision for adequate safeguarding of files, charts, and other relevant data developed through polygraph examinations to avoid unwarranted invasions of privacy.

D-4. RESTRICTION ON APPROVAL TO USE THE POLYGRAPH

Approval to use the polygraph will be granted only for 1-year periods → and is conditioned upon prior approval of the agency's regulations and directives as provided in D-3 above. ← An agency given approval to use the polygraph for competitive service positions will be required to recertify annually that the conditions which led to the original certification still exist in the agency.

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